DALLAS B. McNEIL,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-36-A
BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 12, 1999

Appellant Dallas B. McNeil seeks review of an October 29, 1997, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concluding that Appellant was not entitled to oil and gas related income from Fort Peck Allotment No. 3039. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. Sometime in early 1996, Appellant approached his nieces, Beverly Werner and Kathleen Cardinale, who are also enrolled tribal members, concerning the purchase of trust land which they owned. The property is described as Allotment No. 3039, Lot 5, sec. 29; Lot 10, sec. 30, T. 30 N., R. 55 E.; E½, sec. 36, T. 31 N., R. 54 E., Principal Meridian, Roosevelt County, Montana, containing 357.44 acres more or less. Werner and Cardinale inherited this property from their mother, and each owned an undivided 1/2 interest. They agreed to sell Appellant the surface estate and one-half of the mineral estate. In May 1996, they submitted land sale applications to the Fort Peck Agency, BIA.

In November 1996, BIA appraised the surface estate of this property at $83,800. In December 1996, it appraised the mineral estate at $10,008.32. The mineral estate appraisal was based, inter alia, on findings that there were no known solid mineral or oil and gas resources and that the property was separated from producing oil and gas wells by dry holes. BIA notified Werner and Cardinale of these appraisals in December 1996 and January 1997, respectively.

Appellant, Werner, and Cardinale agreed upon a purchase price of $88,804.16. Appellant tendered the full purchase price to BIA by check dated February 3, 1997. On February 10, 1997, BIA provided copies of the deeds to Werner and Cardinale for their signature. It appears that both Werner and Cardinale signed the deeds on February 26, 1997. On or about February 27, 1997, BIA deposited Appellant's check into a special deposit account. Werner and Cardinale returned the deeds to BIA on March 3, 1997. The deeds were approved on March 4,

1997. The purchase money was transferred to Werner and Cardinale on or about March 4, 1997. The deeds were transmitted to Appellant on March 25, 1997.

During the same time period, on or about September 26, 1996, BIA listed Tract 187 as available for oil and gas leasing. This tract was described as the E½, sec. 36, T. 31 N., R. 54 E., Principal Meridian, Montana, containing 320 acres, more or less. LoneTree Energy, Inc., submitted a bid of $51 per acre, with a total bonus bid of $16,320.

On January 14, 1997, the Superintendent notified LoneTree that its bid had been accepted and provided copies of the ownership information and necessary forms. Werner signed the lease, apparently on January 23, 1997. Cardinale signed a bid acceptance form on January 31, 1997. The Superintendent approved the lease on February 18, 1997. The lease bonus, first year's rent, and accrued interest were transferred to Werner and Cardinale on or about February 19, 1997. 1/

Nothing in the administrative record or in Appellant's filings shows when or under what circumstances Appellant learned of the oil and gas lease. However, by letter dated August 26, 1997, he wrote to the Superintendent, contending that he was entitled to one-half of the lease bonus and of the first year's rental. On September 3, 1997, the Superintendent responded that "[a]t the time of the oil and gas lease approval by the Superintendent, * * * [Werner and Cardinale] were the owners of said minerals and were [entitled] to the bonus and first year rental." Sept. 3, 1997, Decision at 1.

Appellant appealed to the Area Director by letter dated September 23, 1997. A note at the top of Appellant's one-page letter stated: "ATTENTION: NOTICE OF APPEAL." A second page contained a certificate of service for Appellant's "Notice of Appeal and Statement of Reason."

By letter dated October 2, 1997, the Area Director notified Appellant that his appeal had been received on September 29, 1997; informed him of his responsibility to serve interested parties; and stated that "any interested party wishing to participate in an appeal proceeding should file a written answer responding to the appellant's Notice of Appeal and Statement of Reasons * * * within 30 days after receipt of the State[ment] of Reasons."

On October 29, 1997, the Area Director issued a decision holding that BIA owed a trust responsibility to Werner and Cardinale, as the owners of the trust property proposed to be sold; and that BIA properly paid the lease bonus and first year's rent to the landowners of record. He further held that it was not BIA's duty to require landowners to inform prospective buyers that they had executed a lease.

1/ LoneTree assigned 100% of its interests, "excluding all oil and gas from the surface to the top of the Muddy formation," to Hugoton Energy Corp. The Superintendent approved the assignment on Feb. 18, 1997.

On November 3, 1997, the Area Director received a document dated October 29, 1997, and entitled "Answer of Interested Parties: Beverly Werner and Kathleen Cardinale (sellers), Dallas B. McNeil (buyer)." Only Werner signed the answer. The answer stated that Cardinale admitted receipt of Appellant's Notice of Appeal, but that Werner had never been properly served. It continued:

> The agreement with LoneTree Energy, Inc. was not a sale of mineral rights, but merely a lease to explore for minerals. Since we were the owners of said minerals and property on February 18, 1997, we received a signing bonus from LoneTree Energy, Inc. and have not heard from them since. All documents and monies were transacted and approved through the Fort Peck office prior to the transfer of the deed to [Appellant]. Any procedural issues were not addressed by [Appellant] or ourselves, but rather dictated by the Agency.
>
> While the argument could be made that the signing bonus was irrelevant since it was not contemplated by the parties as an essential term of the sale, we nevertheless support our uncle's appeal against the Government. On the other hand, we do not feel responsible for the situation since we followed all procedures properly.

Oct. 29, 1997, Letter at 1-2.

The Area Director responded to the answer on November 12, 1997, stating that he was "unsure of what position you are taking." Nevertheless, he declined to change his decision:

> Our trust responsibility was fulfilled in the depositing and disbursement requirements for income generated from trust mineral properties to the record owners of that date.
>
> If you and your sister feel it is in your best interests to settle the monetary dispute with your uncle, that is your privilege.
>
> On March 4, 1997, the land sale of the surface estate you and your sister owned and 50 percent of the minerals was approved and transferred to [Appellant's] ownership. He will receive his proportionate share in future royalties when billings to the oil company are conducted.

Nov. 12, 1997, Letter at 2.

Appellant appealed to the Board. Both Appellant and the Area Director filed briefs on appeal.

This matter has been unnecessarily complicated by the fact that the Area Director issued a decision prematurely. The Area Director appears to have made two assumptions: (1) Appellant intended the document entitled "Notice of Appeal" to also be a Statement of Reasons, perhaps because of the reference to a Statement of Reasons on the certificate of service, and (2) all interested parties received the Notice of Appeal and assumed Statement of Reasons on September 29, 1997, the same day he received them. For purposes of this discussion only, the Board will assume that both of the Area Director's assumptions were correct.

Under the assumptions stated above, interested parties had until October 29, 1997, to file an answer. See 25 C.F.R. § 2.11(c). 25 C.F.R. § 2.13(a)(2) provides that an appeal document "is considered filed by mail on the date that it is postmarked." Therefore, interested parties had until October 29, 1997, in which to have their answer(s) postmarked. Because the administrative record does not contain the envelope in which the answer from Werner and Cardinale was mailed, the Board accepts the October 29, 1997, date of the letter as also being the date of mailing. Therefore, the answer was timely. By issuing his decision on October 29, 1997, the Area Director failed to allow time for an answer to be received, thereby failing to allow interested parties their due process right to present their positions. The Board has previously discussed the problems caused by the issuance of premature decisions. See, e.g., Laducer-Bercier v. Aberdeen Area Director, 32 IBIA 104, 106 n.3 (1998), and cases cited therein; Fenner v. Acting Billings Area Director, 29 IBIA 116, 117 n.2 (1996); Kearny Street Real Estate Co., L.P. v. Sacramento Area Director, 28 IBIA 4, 7 (1995), and cases cited therein.

The Area Director's response to the answer was that he did not understand the position being taken. The Board also does not understand Werner's and Cardinale's position in their October 29, 1997, filing. It appears they are saying that they believe Appellant should receive half of the lease bonus and first year's rental. It is not clear whether they understand that, in order for Appellant to receive this amount, they would each be required to repay half of what they received. If, when they filed their answer, Werner and Cardinale were amenable to giving Appellant half of the money they received in regard to the lease, the appeal might have been moot.

It is also not clear whether Werner and Cardinale still take the same position, because they did not participate in the proceedings before the Board. However, the Board concludes that their position is not critical to its consideration of the argument which Appellant raises on appeal.

Appellant does not dispute that he was not an owner of record of Allotment No. 3039 when the lease was signed, the bonus and first year's rental were paid, or those amounts were transferred to Werner and Cardinale. Instead, he argues that BIA owed him a trust responsibility in regard to this transaction and was therefore required to inform him of the pending lease. This is incorrect. As the Board has previously held, BIA's trust responsibility is to the owner(s) of trust property. Appellant, although Indian, was in this case merely a prospective purchaser of trust property. As such, BIA owed him no trust responsibility in regard to the property which he

sought to purchase. Gullickson v. Aberdeen Area Director, 24 IBIA 247, 248 (1993); Smith v. Acting Billings Area Director, 18 IBIA 36 (1989). 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's October 29, 1997, decision is affirmed. 3/

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

2/ BIA would owe Appellant a trust responsibility in regard to any other trust property which he might have owned at that time.

3/ This decision does not prevent Werner and Cardinale from voluntarily providing Appellant with a share of the lease bonus and first year's rental, if they are so inclined. Neither does it preclude Appellant from exercising any other legal remedies he might have.